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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. [redacted] 999 481 218

THE UNITED STATES EX RELATIONE WILLIAM W. WARDEN, PLAINTIFF IN ERROR,

vs.

WILLIAM E. CHANDLER, SECRETARY OF THE NAVY.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 30, 1883.

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MANDAMUS.—PETITION OF RELATOR.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

THE UNITED STATES, EX REL. WILLIAM W. WARDEN,
vs.
WILLIAM E. CHANDLER, SECRETARY OF THE NAVY.

No. 24811. *At law.*

To the Honorable the Justices of the Supreme Court of the District of Columbia:

The petition of William W. Warden respectfully represents:

1. That your petitioner is a citizen of Washington, in the District of Columbia; a member of the bar of the Supreme Court of the United States; also a member of the bar of the Supreme Court of the District of Columbia.

2. The defendant, Hon. William E. Chandler, is the Secretary of the Navy.

3. That on the third day of March, eighteen hundred and eighty-one, Congress passed an act, which was approved by the President on the same day, appropriating the sum of two hundred thousand dollars "to enable the Secretary of the Navy to establish at the Isthmus of Panama naval stations and depots of coal for the supply of steamships-of-war," which sum of money is to be "available for expenditure as soon as suitable arrangements can be made to the proposed end."

4. The said act of Congress has continued and is now in full force and effect.

5. Your petitioner shows that said law was the direct outgrowth of and is part of the continuous system of laws and proceedings of Congress and concurrent official acts of the Executive Departments—hereinafter set forth—having for their object the maintenance of an international policy for the United States at the American Isthmus; the promotion and protection of our commercial marine; the supply of our steamships-of-war, and the efficiency of our Navy looking to the "common defence;" and "for avoiding as well as repelling dangers that may threaten us in the future."

6. The official documentary evidence on file in the Exective Departments and the proceedings of Congress show that, in the years 1858 and 1859, the President (then Mr. Buchanan), the Secretary of State (then Mr. Cass), and the Secretary of the Navy (then Mr. Toucey), in furtherance of the above-recited interests, had under consideration the establishment of naval stations and coaling depots for the United States at suitable points upon the American Isthmus.

7. The like evidence shows that the immediate, direct origin of said consideration and consultations on this subject, grew out of discussions in Congress and contemporaneous diplomatic controversies soon after the ratification of the Clayton-Bulwer Treaty in 1850, and especially in the years 1852, '3, '4, '5, '6, '7, '8, and '9, relative to the Monroe Doctrine and our then threatening relations with Great Britain, in connection with the Clayton-Bulwer treaty; and that

8. The wise policy, vital importance, and imperative necessity of establishing naval and coaling stations upon the American Isthmus were then admitted by our statesmen, irrespective of political parties, earnestly urged by the leading Senators and Representatives in Congress, and recommended by the several administrations during the years above named. That

9. Early in 1859, in response to that sentiment and demand, whilst our Government was thus considering the matter of lo-

cating and establishing naval stations upon the American Isthmus, the envoy extraordinary and minister plenipotentiary from New Granada, (now United States of Colombia,) PEDRO A. HERRAN, directed President Buchanan's attention to the Chiriqui Lagoon and Golfo Dulce, (a part of New Granada or Colombia,) their unsurpassed harbors, and the lands, concessions, and privileges therein situate, the property of the Chiriqui Improvement Company, a corporation (composed of citizens of the United States) created by act of the Legislature of the State of Pennsylvania, in 1854, and supplemental acts of 1855. And the said company was afterwards incorporated by the Congress of New Granada.

10. After a thorough examination of the subject, in consultation with our Secretary of State, the Secretary of the Navy, and the minister from New Granada or Colombia aforementioned, in connection with the representatives of the Chiriqui Improvement Company, President Buchanan directed the Secretary of the Navy to take suitable action to secure to the United States the rights to the use of the Chiriqui harbors, lands, and other privileges for naval and coaling stations.

11. The Attorney-General (then Hon. Jeremiah S. Black) having examined the aforesaid Company's title to the aforenamed lands, etc., and made favorable report thereon, the Secretary of the Navy, on the 21st day of May, 1859, entered into a written agreement with the Chiriqui Improvement Company, subject to ratification by Congress, for the purpose of securing to the United States—

"The right to use as harbors the waters of the lagoons, bays, or gulfs sheltered or partially surrounded by the lands of the said Chiriqui Improvement Company on the Atlantic and Pacific sides of the isthmus; a grant of five thousand acres of land on each side of the isthmus for depots and stations for naval purposes, to be selected at the Lagoon of Chiriqui on one side and the harbor of Gilfito on the other; a right of way or transit over the roadway through the province of Chiriqui from ocean to ocean; the right to use for naval purposes the coal in the mines of the said company and other privileges named in the instrument."

12. This agreement was recommended and approved by the Government of the United States of Colombia.

13. For these rights, etc., the Government of the United States agreed to pay the aforesaid Chiriqui Improvement Company three hundred thousand dollars.

14. The Secretary of the Navy transmitted the said contract to Congress for approval and appropriation. The House Committee on Naval Affairs thereon reported a bill (accompanied by an elaborate favorable report) to carry out the said contract; the measure, the titles to the property, character of harbors, etc., were thoroughly discussed in both Houses of Congress, [supported by Senators Fessenden, Seward, Green, Crittenden, Mallory, and other leading statesmen then in Congress irrespective of political parties,] resulting in a preliminary appropriation of ten thousand dollars—

"To enable the President to send some competent person or persons to the Isthmus of Chiriqui, whose duty it shall be to examine into and report upon the quality and probable quantity of coal to be found there upon the lands of the Chiriqui Improvement Company; upon the character of the harbors of Chiriqui Lagoon and Golfito; upon the practicability of building a railroad across said isthmus, so as to connect said harbors; and generally upon the value of the privileges contracted for in"—

the aforesaid contract of May 21, 1859.

15. The President accordingly appointed a Commission composed of officers of the army and the navy, (hydrographers, topographical engineers, and geologists,) who sailed for Chiriqui in the United States ship "Brooklyn," Captain (afterwards Admiral) Farragut commanding. The said Commission was absent more than three months, returning November 28, 1860, and submitting their report to the Secretary of the Navy.

16. This report made a much better showing of the value of the harbors, lands, etc., of the Chiriqui Improvement Company than had ever before been presented. It was sent to Congress by President Buchanan on the 22d January, 1861, being Ex. Doc. 41, of the last session of the 36th Congress.

17. This being the "short session," of but six weeks further duration, considered in connection with the disturbed condition of the country on account of the impending civil war, the Chiriqui matter was not urged by anybody, and went over as unfinished business, remaining in abeyance for about one year.

18. On the 17th day of July, 1862, Congress passed an act appropriating money and authorizing the President to make provision for the transportation, colonization, and settlement, in some tropical country beyond the limits of the United States, of such persons of the African race made free by the provisions of that act, as might be willing to emigrate.

19. Upon recurrence to the said incomplete contract for naval stations, on examination of the report of the last aforesaid Commission of "competent persons," and upon the recommendation of the Envoy Extraordinary and Minister Plenipotentiary of Colombia, President Lincoln selected the aforesaid Chiriqui property as the most suitable for the said colonization purposes.

20. By direction of the Secretary of the Treasury (then Mr. Chase)—upon request of the President—the Solicitor of the Treasury (then Edward Jordan) made a thorough and critical investigation as to the aforesaid harbors, lands, etc., and the title of said Chiriqui Improvement Company to the said lands, etc.

21. The Solicitor of the Treasury reported in detail, certifying that the title of said Chiriqui Improvement Company to said property was perfect; that the harbors are unsurpassed and probably incomparable for all maritime purposes; the climate healthy; ample coal beds, fertile soil (giving alike the products of the temperate and tropical countries); timber of great value, etc., etc.

22. Thereupon, President Lincoln, through the Secretary of the Interior, on the 12th day of September, 1862, entered into

a contract with the Chiriqui Improvement Company for purchase of part of its lands in Chiriqui upon which to settle and colonize the freedmen. Preparations accordingly were made therefor, and were progressing, when—

23. Soon thereafter, a new policy relative to "persons of the African race" was decided upon. The freedmen were not colonized, as contemplated by the United States Government, but were enlisted as soldiers in the civil war, and thus the second contract with the Chiriqui Improvement Company stands unexecuted on the part of the United States Government.

24. The aforesaid contract of May 21, 1859, made during the Buchanan Administration, and the later agreement of September 12, 1862, made during the Lincoln Administration, remained in abeyance, on account of the unsettled condition of public affairs, until an early period during the Grant Administration, when your petitioner, as attorney and counsellor for the said Chiriqui Improvement Company, *et al.*, brought the subject before President Grant for consideration and settlement.

25. Upon the written statement of your petitioner, the aforesaid contracts were, by order of President Grant, referred pro forma to the Attorney-General for examination and advice, and especially with reference to the proposed naval stations and coaling depots at the Chiriqui Isthmus. The papers in the case did not reach the Attorney General, having been mislaid in the Navy Department, and were not found until a few days before the close of President Grant's Administration. The whole matter, therefore, passed over, as pending unfinished Executive business, to the Administration of President Hayes.

26. At an early period during the last aforesaid administration, the whole subject was taken under consideration by President Hayes, upon the written petition of your relator; and, meanwhile:

27. On the 23d day of January, 1880, the House Select Committee on Inter-Oceanic Ship Canal unanimously passed a resolution that "the interests of the United States would be promoted by the speedy acquisition of the Gulf of Dulce and Golfito on the Pacific coast, and of the Bay of Boca del Toro, Lake Chiriqui, on the coast of the Carribean Sea," to "be used for naval and coaling stations;" and that "it is the duty of the Government to take immediate action in the direction of obtaining title thereto, if on investigation it shall be found that the title is not now vested in the United States." In accordance with another and simultaneous resolution of that Committee, a copy of these resolutions was, by the Chairman of that Committee, in person, presented to the Secretary of the Navy; and that officer, in response to said resolutions and upon agreement with your petitioner, on the same day (23d January, 1880,) dispatched vessels to those points severally—the United States steamer "Adams" to the Gulf of Dulce; the United States steamer "Kearsarge" to Lake Chiriqui.

28. The "Adams," some days thereafter, took possession of harbors and lands of the Chiriqui Improvement Company aforedescribed, and established a coaling station in Golfito; the "Kearsarge" did the same in Lake Chiriqui.

The United States Government has continued in possession ever since, in accordance with the aforesaid agreement between the Secretary of the Navy and your petitioner as the attorney and counselor for the owners of the Chiriqui property.

29. Soon thereafter, on the 12th day of May, 1880, the House Committee on Naval Affairs reported a joint resolution, accompanied by a report, "authorizing and instructing the Secretary of the Navy to take the necessary steps to secure adequate naval stations and harbors for the use of the naval forces of the United States at proper points on the Atlantic and Pacific coasts of Central America and of the American Isthmus." [The Committee on Naval Affairs acted in this matter in harmony with the members of the Committee on

Inter-Oceanic Ship Canal, and were at that time advised officially that the aforementioned steps of the Secretary of the Navy had been taken.]

30. A few days thereafter, viz., on the 16th day of June, 1880, the Senate Committee on Naval Affairs, [its members also being officially advised, as last above set forth,] reported unanimously a joint resolution of the same tenor and effect as that of the House last mentioned above.

31. In the subsequent annual report of the Secretary of the Navy (November 30, 1880,) that officer, remarking upon the necessity for naval and coaling stations, says:

"I have therefore caused steps to be taken for the establishment of a coaling station on each side of the isthmus, *at points eminently suitable, both as it regards naval uses and the commerce of that region.* The one on the east side is located at Chiriqui Lagoon, in the Caribbean Sea, and in the immediate vicinity of veins of coal already opened; and that on the west at the Bay of Golfito, a part of Golfo Dulce, on the Pacific. The distance between them is less than one hundred miles. *The only safe and sufficiently commodious harbors on the isthmus are at these points*, and although the Department did not, before making the deposits of coal, acquire title to the lands occupied, yet *it assured itself that no difficulty would be likely to arise on that score.*"

32. The President, in his annual message to Congress, December 6, 1880, confirmed the foregoing statement of the Secretary of the Navy.

33. President Hayes and the Secretary of the Navy, (then Hon. Nathan Goff, jr.,) examined the matter in detail, in all its aspects, and thereupon an agreement was made between those officers, on behalf of the United States on the one part, and your petitioner, as attorney aforesaid, on behalf of the said owners of the Chiriqui property, on the other part, whereby (besides other considerations) the sum of two hundred thousand dollars was to be paid to said owners for the aforesaid lands and other privileges for naval stations and coaling depots, a part of which property the Government (as hereinbefore related) had already taken possession of—*provided* Congress should make the necessary appropriation therefor.

34. Accordingly, immediately thereafter, on the 2d of February, 1881, in order to consummate said agreement and to complete the establishment of the said naval stations and coaling depots, the President sent his special message to the House of Representatives, recommending said appropriation, and transmitting a letter from the Secretary of the Navy, describing the aforesaid Chiriqui property already in possession of the Government, and stating "that in order to proceed further in the steps taken towards the establishment of the aforesaid naval stations, an appropriation of the sum of $200,000 is now required."

35. The aforenamed special message and accompanying letter were, by the Speaker of the House, immediately referred to the Committee on Naval Affairs, and thereupon (on the following day) the committee unanimously approved "the recommendation of the President and the Secretary of the Navy" as above set forth, and instantly and formally referred it to the Committee on Appropriations, with the request in writing that they "take immediate favorable action thereon."

36. The same Committee on Naval Affairs, a few days thereafter (February 26, 1881), whilst the Sundry Civil Appropriation Bill was under consideration in the House, proposed, as an amendment to that bill, the clause which became a law, as hereinbefore mentioned, appropriating $200,000 for naval stations on the Isthmus of Panama.

37. This appropriating clause was thoroughly discussed in the House during parts of two days. At the outset of that discussion the following inquiry [by Mr. Blount] was made of the Naval Committee: "*I ask, in view of getting at what is authorized by this proposition, is there not a purpose here to buy lands on the Isthmus of Panama?*" To that inquiry the member [Mr. Goode] of the Naval Committee, having charge of the amendment, answered: "*The purpose is to do identically what the President of the United States and the Secretary*

of the Navy have recommended" in the special message and letter above quoted.

38. The *Congressional Record* shows the latter above-related facts; and, further, that throughout this debate Chiriqui Lagoon and Golfo Dulce were always and solely in the minds of the members of the House. Those stations were repeatedly and specifically named, and no other whatever was referred to.

39. The Senate passed the clause (as introduced and adopted in the House) without any discussion. The President approved the act on the third day of March, 1881.

40. The term of office of Mr. Hayes, as President, and of Mr. Goff, as Secretary of the Navy, expired on the next day after the said act of appropriation became a law, and they were succeeded in office, severally, by Mr. Garfield, as President, and Mr. Hunt, as Secretary of the Navy. Therefore, the Executive officers who recommended the appropriation as aforesaid, were deprived of authority and opportunity to consummate and perfect the payment of the $200,000, appropriated to be paid to the owners of the aforesaid harbors, etc., and to receive from the latter the requisite transfer of title papers, in accordance with the aforementioned agreements and understandtng had between President Hayes and Secretary of the Navy Goff, on the part of the Government, and your petitioner, as attorney for the owners of said property, on the other part.

41. Within a week after Mr. Hunt became Secretary of the Navy, your petitioner, verbally and in writing, brought this subject-matter to the attention of that officer. At the frequent urgent solicitation of your petitioner for a speedy examination and settlement of the matter, in pursuance of the law and the agreement hereinbefore mentioned, the said Hunt had the subject informally but reluctantly and only cursorily under consideration, from time to time for several months. During this

period, the said Secretary (although earnestly urged thereto by your petitioner) at no time seriously took up the material official papers and documents in hand; he made no critical examination of the history of the case, either of the earlier or later occurrences; he did not critically examine the details of proceedings in Congress relative to the said $200,000 appropriation; although requested by your relator so to do, said Secretary Hunt refused to examine the title or refer the same to the Attorney General, or take any of the appropriate legal and necessary steps looking to the performance of his duty as required by his official obligation and especially as required by the said act of March 3, 1881.

42. The said Secretary (at all times recognizing your petitioner as the sole attorney of record for the owners of said Chiriqui property), nevertheless, meanwhile, listened to noted blackmailers, voluntary intermeddlers, and hearsay statements from disreputable and irresponsible persons, who, from malicious motives and actuated by sordid purposes, sought to prevent the payment of the said appropriation money to the owners of the said Chiriqui property. The said Secretary, while thus giving audience to the said blackmailers, *et al.*, and giving credence to their illegal and anomalous communications, concealed from your petitioner the fact that such irregular hearings had taken place, as well as the nature of the communications made to said Secretary.

43. And your petitioner avers that, while the regular official documents—Executive and Congressional—at that moment on the Secretary's table and on file in the office of the Secretary of the Navy contradicted and disproved the allegations of the blackmailers, *et al.*, nevertheless the said Secretary refused to seriously examine and consider said regular official documents; adopted the anomalous statements aforesaid, and, based upon that illegal showing, together with his (said Hunt's) confused ideas and ignorance of the actual legal case, made the follow-

ing remarks thereon, in his annual report of November 28, 1881, viz :—

"COALING STATIONS ON THE ISTHMUS OF PANAMA.

"In the act of Congress making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1882, and approved March 3, 1881, the sum of $200,000 was appropriated 'to enable the Secretary of the Navy to establish at the Isthmus of Panama naval stations and depots for coal, for the supply of steamships of war, to be available for expenditure as soon as suitable arrangements can be made to the proposed end.'

"Constantly, since the passage of this act, the department has been importuned to expend the sum here appropriated in acquiring title to certain rights upon the isthmus, claimed to belong to Ambrose W. Thompson, as the representative of a corporation styling itself the Chiriqui Improvement Company. The appropriation seems to have been granted in pursuance of the recommendation of the Hon. N. Goff, Jr., Secretary of the Navy, in a report made by him to President Hayes, under date of January 19, 1881. This report was submitted by President Hayes, in a message to the House of Representatives, dated February 2, 1881. It is evident that the report of the Secretary of the Navy and the message of the President contemplated the establishment of the naval stations and depots claimed to belong to the Chiriqui Improvement Company, and Ambrose W. Thompson. Indeed, the Hon. R. W. Thompson, Secretary of the Navy, in his report under date November 30, 1880, states that he had 'caused coal to be deposited in small quantities on these lands for use by our vessels whenever it may be needed.' This step was taken with a view to acquiring title to these lands by our Government. The appropriation, however, seems to have carefully avoided all mention of the selection of these lands, or of any other specific lands for the contemplated coal stations. Under the general instructions of this authorization I have been unable to satisfy myself that the interests of the government will be advanced by the payment of this sum, or any portion of it, for the grant represented by Mr. Thompson. From reports made to the department from reliable sources, since the passage of the appropriation and before, I am not satisfied that the lands and harbors known as the Chiriqui grant are the best adapted for coal stations. Several parties claim to be owners of the grant which Mr. Thompson asserts belongs entirely to him and his company. It is also urged that the title of Mr. Thompson and the company is not valid; that it rested originally upon a grant conferred by the United States of Colombia under certain conditions, which have not been complied with by the grantees; that such coaling stations would result in a useless expenditure of money, involving large expense to the Government in the maintenance of the stations, and probably resulting in their abandonment as being in an expensive, isolated, inconvenient, and unhealthy position. The sovereignty over these lands has undergone changes since the date of the original contract; and it is by no means certain that the obligations said to be conferred under

that contract will be ratified and held valid by the government now in power there. It is further reported that land in this lagoon is almost valueless, and that any one settling there and cultivating it acquires title by mere possession. For these and other reasons, I have declined to treat for the lands offered by Mr. Ambrose W. Thompson and the corporation in whose name he acts."

44. Your petitioner avers that he was taken by surprise upon reading the foregoing remarks in the published annual report of said Secretary, who had never intimated to your petitioner the allegations, conclusions, and purposes of said Hunt, therein set forth; but, on the contrary, said Secretary Hunt had indicated to your petitioner that he (said Secretary) generally, if not wholly, agreed with your petitioner's statements, claims, views, and constructions of law in the premises; and, in order to conclude the work, the said Secretary had made several appointments with your petitioner to hear his (petitioner's) final suggestions in the matter. These appointments, however, were evaded, upon various frivolous grounds by said Hunt, who, in excuse for failure to give the subject the sincere, thorough examination required, among other reasons expressed himself as so overwhelmed with sorrow, anxiety, and perplexity in consequence of the assassination of President Garfield that he did not feel able to give to the Chiriqui matter the consideration its importance demanded.

45. Immediately after hearing of and reading in the newspapers of the day the above-quoted portion of Secretary Hunt's report, your petitioner, as the files in the Navy Department show, wrote and delivered to said Hunt a communication expressing surprise, as related in the foregoing paragraph. And, at the same time, your petitioner filed with said Secretary of the Navy a motion for a re-hearing and examination of the case *de novo*, alleging, as reasons for such motion, various points, but especially that the Secretary had not examined and considered the regular, legal, pertinent documents on file; and that the said Secretary had not informed your petitioner of the alleged facts and matters—the "other reasons" for "declin-

ing to treat"—nor given petitioner opportunity for replying thereto.

46. Secretary Hunt, in reply, expressed regret that he had not submitted to your petitioner the anomalous matter; formally noted in writing the filing of your petitioner's said motion; and, thereupon, ordered such re-hearing at his (Hunt's) "earliest convenience." Said Secretary, at the same moment, agreed to treat his previous actions in the case, whatever their character, as suspended until after your petitioner should be accorded the re-hearing aforesaid. In this condition the matter stood, when—

47. On the 21st day of December, 1881, Hon. J. F. King introduced in the House of Representatives a resolution, which was passed by that body, requiring the Secretary of the Navy to transmit to the House "all reports, communications, maps, and other information in the Navy Department relating to certain lands and harbors known as the Chiriqui Grant," together with the "other reasons for declining the lands offered" by the owners of the Chiriqui property.

48. More than a month thereafter, on the 26th day of January, 1882, in response to the said resolution, the said Secretary transmitted to the House his letter and "accompany documents." In that brief letter, the Secretary says the "other reasons" for "declining the lands * * * will appear in part from these documents. Besides these, they were the result of repeated *oral conferences upon this subject* with officers of the Navy *and others*."

49. The said letter and accompanying documents were printed, and placed in the hands of the Committee on Naval Affairs, to whom the subject had been referred for examination and report. Examination by the Committee disclosed the fact that Secretary Hunt had withheld some of the most essential documents, maps, &c., and that those he had transmitted to the House were not only in great part impertinent, but were

in such confusion that the Committee declined to begin the required investigation. Secretary Hunt being by said Committee informed of these facts, made his second attempt to forward the papers to the House, and again he failed to send essential documents, which were on file in his office. He was invited by members of said Committee to make known to them the "other reasons" for "declining to treat;" the substance of the alleged "repeated oral conferences upon this subject;" and the names of the persons—"officers of the Navy and *others*"—whose secret communications said Hunt had adopted as against the opinions of the law officers and other legal papers, Congressional and Executive documents, reports of the United States Commission, &c., on file in the Navy Department. Secretary Hunt did not comply with the said request; and thereupon, at the earnest solicitation of your petitioner [who, in his aforesaid capacity of counsel, had been frequently in attendance urging and aiding investigation], the said Naval Committee officially, in writing, invited Secretary Chandler (who, in the meantime, had succeeded to the office of Secretary of the Navy) to examine the subject and inform said Committee "what further legislation is, in" the opinion of said Secretary, "necessary upon the matter," and, further, that if in his "opinion public necessity does not require coaling stations upon the Isthmus or at this point [Chiriqui], it might be proper for this Committee to report a repeal of the law making appropriation for that purpose, but no action can be properly taken by us until further informed in the matter." Upon consideration of said communication, Secretary Chandler decided to take no part in the proceedings before the Committee. And thereupon, after the matter had been nearly six months thus pending, the said Committee made final investigation of the case upon the papers before them, and, on the 31st day of July, 1882, submitted to the House of Representatives the following report, which was adopted:

"In obedience to a resolution of the House, adopted on the motion of Mr. King, of Louisiana, the papers and correspondence in relation to the pur-

chase of the Chiriqui coaling stations were transmitted to the House by the Secretary of the Navy, and have been printed. The committee, upon an examination of the subject, do not discover any reason why the power now vested by law in the Secretary of the Navy over the subject of the purchase of coaling stations on the Isthmus should be withdrawn. He is not likely to purchase them unless they are required by sound public policy, nor until a perfect title can be secured.

"In view of the possible future importance of the Isthmus in its relation to commerce, it may become of the utmost importance that coaling or naval stations should be secured by the United States. We think the discretion over the subject now vested in the Executive Department should not be taken away, and desire to be discharged from the further consideration of the subject, and recommend that said resolution do lie upon the table."

50. Your petitioner, upon investigation, avers that said Secretary Hunt had no legal reports from "reliable sources, since the passage of the appropriation and before," to warrant him in forming his expressed opinions in the premises; "several parties" did not "claim to be owners," and there was no legal evidence in the Navy Department that the title of the said Chiriqui Improvement Company, *et al.*, had been impaired, nor in anywise affected since it was pronounced valid in said owners by Attorney General Black, Solicitor of the Treasury Jordan, and the aforenamed officers of the Government of the United States of Colombia. Nor had the latter Government indicated a purpose to annul its original consent to the aforesaid contracts; but, on the contrary, said Government had expressly approved the recent act of taking possession of the aforesaid sites for coal depots.

51. During the progress of the last aforesaid investigation by said Committee on Naval Affairs, and especially after the last above-quoted report was adopted in the House of Representatives, your petitioner urged consideration of this subject by the present Secretary of the Navy, Hon. William E. Chandler, to the end that the title to the said Chiriqui property should be examined pro forma (notwithstanding the said several previous authoritative examinations), and that the money appropriated as hereinbefore described, be paid, in accordance with the aforesaid agreements between the Executive Depart-

ments and your petitioner, and in accordance with the law of March 3, 1881.

52. Within the eighteen months last past, your petitioner made several arguments to the Secretary of the Navy, in which all the foregoing history, legal points, statutes, etc., etc., in detail, were submitted. The said Secretary of the Navy, whilst accepting the argument of your petitioner that the said appropriation act of March 3, 1881, clearly intended the money to be expended for the Chiriqui naval stations and depots of coal aforesaid; and whilst the Secretary admitted that the acts of his predecessor (Hunt) have no legal binding force upon him (Chandler), and that the matter remained, substantially, as it stood at the date of the conclusion of the terms of office of Hon. R. W. Thompson and Hon. Nathan Goff, jr., nevertheless the said Secretary, Hon. William E. Chandler, now declines to take the other steps required by law to make perfect the possession obtained by the United States of the aforesaid Chiriqui property as aforesaid.

53. To your petitioner's communication on that subject, Secretary Chandler, on the 25th day of June, 1883, made written reply, of which the following is a copy:

"NAVY DEPARTMENT,
"WASHINGTON, *June* 25, 1883.

SIR: In reply to your letter of the 23d inst., asking to be informed as to my decision relative to the Act of March 3, 1881, appropriating $200,000 to enable the Secretary of the Navy to establish, at the Isthmus of Panama, naval stations and depots of coal, &c., I have to say that the decision is not to revise the determination of Secretary Hunt not to expend the appropriation, but to submit the whole subject to Congress at its session in December.

"Very respectfully,
"WM. E. CHANDLER,
"*Secretary of the Navy.*

"WILL'M W. WARDEN, Esq.,
"*Of Counsel for the Chiriqui Improvement Company et al.,*
"*Washington, D. C.*"

54. To your petitioner's additional request that the matter be referred to the Attorney-General for examination and opinion,

Secretary Chandler made written answer refusing to refer the case to the Attorney-General.

55. Your petitioner has complied with everything necessary to constitute his right and the rights of the said Chiriqui Improvement Company, and to entitle them to the relief for which he prays; and on the 28th day of November, 1882, he notified the Secretary of the Navy that the Chiriqui Improvement Company stands ready to perform any act necessary to make permanent and perfect the possession of lands and rights already acquired by the United States in said Chiriqui property, and to perform any and all additional acts which the law, equity, and good conscience may demand.

56. Your relator states, further, that he has, individually, a vested interest in the said Chiriqui property, and in the $200,000 appropriated and intended by Congress to be paid to the owners of said Chiriqui property. That the interests of said Chiriqui Company and your petitioner in the subject-matter herein are harmonious, and the obligations of your relator to the said Company, *et al.*, require that he shall prosecute to final disposition the claims herein described, by such proceedings as may be applicable in law and equity.

57. Your petitioner further avers that one of the essential considerations entering into the aforesaid agreement between the President, the Secretary of the Navy, and your relator, and which in part induced your petitioner to agree to the small sum of $200,000 as compensation for said Chiriqui property, was the enhancement of the value of the adjacent additional possessions of said Chiriqui Improvement Company in the province of Chiriqui, which would accrue by reason of the establishment of Naval Stations at the aforesaid points—Chiriqui Lagoon and Golfo Dulce. And that, in this particular, if the United States Government shall fail to comply with its contract, the interests of said Company and your petitioner will be greatly damaged thereby.

58. Your petitioner avers that, without just cause, the final settlement of the appropriation aforesaid has been delayed more than two years, whilst the law required an immediate speedy performance of the duties imposed upon the Secretary of the Navy, without further reference to Congress as now proposed by that officer. The due administration of the law does not require nor permit the said Secretary to await the action of Congress to see whether the aforesaid law might or might not be repealed. Such postponement would be ruinous to the interests of said owners and your petitioner, and would amount to positive injustice to those who have acquired vested rights which Congress is powerless to deprive them of.

59. Your petitioner is without suitable redress by the ordinary legal methods, and has no adequate, effectual, or equally efficient remedy except the interposition of this honorable court by the writ of mandamus, which your relator prays may be issued to the said Secretary of the Navy, commanding him to take immediate appropriate action in the premises; to perform the duties required by law in that behalf of the Secretary of the Navy; especially to take such action as is demanded by by the said appropriation act of March 3, 1881. And, finally, your petitioner prays that your honors will make such other order for relief as law and justice may require and which may seem to your honorable court appropriate in the premises.

Respectfully,

WM. W. WARDEN.

DISTRICT OF COLUMBIA, *ss:*

Before me personally appeared Wm. W. Warden, the petitioner named in the foregoing petition, and being by me first sworn in due form of law, made oath and says, that he has read the said petition, and that the matters and facts contained therein are true to the best of his knowledge, information and belief.

WM. W. WARDEN.

Sworn to before me, Oct. 10, 1883.

R. J. MEIGS,
Clerk.
by M. A. CLANCY,
Ass't Clerk.

Endorsed on the back of this petition is the following: "24811. At Law. Doc. 29. U. S., *ex rel.* W. W. Warden, *vs.* The Sec'y of the Navy. Petition for Mandamus. Filed Oct. 10, 1883. R. J. Meigs, clerk."

SUPPLEMENTAL PETITION OF RELATOR.

UNITED STATES, EX REL. WARDEN, *vs.* CHANDLER, SECRETARY OF THE NAVY.	*Law docket. No.* 24811.

To the Honorable the Justices of the Supreme Court of the District of Columbia:

Your relator finds your honors closely engaged in the trial of an important case, which cannot reasonably be interrupted, and which, apparently, will engage your attention for some days, thus preventing the relator from opportunity for immediate oral motion to the Court herein; therefore, your relator respectfully submits this written communication to say:—

That, in view of the vital public interests involved in the matters set forth in the petition herein, coupled with the imperiled personal rights of the petitioner, the latter does not feel warranted in relying upon the mere partial presentation of this case, which took place before your honors on the 10th instant.

Previous to the filing of the petition herein your relator,—from his reading of the printed rules of this honorable Court, together with otherwise-obtained information and from his own observation of the legal practice here,—was led to believe that, in order to obtain a rule to show cause upon a petition for the issuance of a writ of mandamus, this Court merely required a brief oral statement from the counsel, possibly to a single Justice, at Chambers, as to the contents of the petition; and that, if that statement presented what might be termed "probable cause" for a hearing upon the petition for the writ, thereupon the justice would, as matter of course, issue the rule to show cause, returnable for hearing *before the court in banc.*

Resting in this belief, your relator did not come to the court prepared for the formal and somewhat extended hearing upon the application which (unexpectedly to your petitioner) occurred herein, on the 10th instant, as aforementioned. So much your relator remarked to the Court at that hearing.

Your relator's experience and observation of the practice in judicial jurisdictions outside this District, as well as his information as to the procedure in this court, in cases of mandamus, assured your relator, therefore, that in the mode he was proceeding he would be enabled to give notice, in the first instance, substantially, to the defendant, Hon. William E. Chandler, Secretary of the Navy, and before any formal hearing could take place, so that the Honorable Secretary could be present in person or by counsel before your honors at any hearing.

But for this idea on the part of your relator, he would not have filed the petition herein until he had himself given notice to the defendant of his purpose to make application for the writ of mandamus, upon a given day and hour thereof.

And, if your honors will permit the suggestion, this last-described result is, substantially, but another mode of familiar legal practice to accomplish the same result and effect as is sought by a formal rule of the Court upon the defendant to show cause why the writ shall not issue.

Regarding it as a personal duty incumbent upon your petitioner to give such notice to the defendant, before a hearing could be had in this case—a duty due out of respect to a high public officer, as well as an obligation in personal courtesy—I respectfully ask that such course be permitted.

And—if such opportunity or procedure may not be had—especially does your relator pray that your honors, before deciding the application for the rule herein, will permit him to present to the Court essential matter—documentary and argumentative—which was always intended by your relator to follow the filing of his petition, at the appropriate time thereafter.

This last-aforementioned matter is by your relator deemed absolutely required in order that your honors shall be enabled to intelligently form correct judgment and do justice in the premises to all parties and interests—public and private—involved in this case.

Your relator feels the more justified in asking this further or additional hearing, because of the announcement of this Court, at the presentation of this case, that certain circumstances had transpired which had induced your honors, thereafter, to more critically and *in extenso* examine applications for the writ of mandamus to public officers.

Whilst your petitioner does not object to the adoption of that more critical procedure, but, on the contrary, regards such rule of practice as eminently fit, wise and just judicial action,—nevertheless, its immediate, unexpected application to your petitioner's case amounts to the visitation of a punishment upon your relator for the possible laxity of court rules and the probable irregularities of gentlemen learned in the law who have heretofore prosecuted mandamus cases in this District.

Respectfully,

WM. W. WARDEN.

October 12, 1883.

Endorsed on the foregoing is the following: "24811 Law. U. S., *ex rel.* Warden, *vs.* Sec'y Navy. Supplemental petition for relator. Filed Oct. 12, 1883. R. J. Meigs, clerk."

ORDER OVERRULING SUPPLEMENTAL PETITION.

FRIDAY, *October* 12, 1883.

UNITED STATES, ex rel.
W. W. WARDEN,
vs.
WILLIAM E. CHANDLER,
Secretary of the Navy.
} *At Law.* *No.* 24,811.

Ordered, That the relator's "written communication" this day addressed to the Court be filed in the cause as part thereof; and the same being considered by the Court is overruled.

JUDGMENT.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In General Term.

UNITED STATES, ex rel.
WILLIAM W. WARDEN,
vs.
WILLIAM E. CHANDLER,
Secretary of the Navy.
} *October Term* 1883.

The matter of this application for a mandamus came on to be heard, and was by the Court fully considered.

It is therefore, this 15th day of October, 1883, by the Court adjudged and ordered that the said application is denied, and the petition is dismissed with costs.

By the Court.

D. K. CARTTER,
Ch'f Just.

BILL OF EXCEPTIONS.

THE UNITED STATES, ex rel.
W. W. WARDEN,
vs.
WILLIAM E. CHANDLER,
Secretary of the Navy.
} *No.* 24,811. *Law docket.*

Be it remembered that on the 10th day of October, 1883, the aforesaid relator filed his said petition in the clerk's office of the Supreme Court of the District of Columbia; and, immediately thereafter, in pursuance of rule No. 19, of the rules of practice of said Court [Exhibit "A"], made application to Hon. David K. Cartter, Chief Justice of the aforesaid Court, at Chambers, for a rule upon the said defendant, William E. Chandler, to show cause why the writ of mandamus prayed for in the relator's petition should not be issued:—

That Mr. Chief Justice Cartter declined to hear the petition aforesaid at Chambers, and referred the petitioner to the Justices of said Court, in General Term:—

That accordingly, on the same day, at the session of said General Term, the relator presented his aforesaid petition, and,—

Thereupon, the said Chief Justice announced that complaints had been recently made by certain Executive officers of the Government, at Washington, to the Justices of that Court, in effect, that the said Justices had been too freely granting the writ of mandamus to the aforesaid Executive Officers—thereby embarrassing and halting the progress of the official work in the Executive Departments of the Government;—that, in consequence thereof, the Justices of the said Supreme Court in General Term had determined thereafter to exercise a more critical and thorough examination than had been the practice in that court theretofore, in the preliminary proceedings upon applications for mandamus.

The said Warden, relator, was thereupon directed by the said Court in General Term to proceed to read his petition

filed herein as aforesaid. Said relator thereupon informed the said Court that he had not expected to be required, in the first instance, to present his case in detail or in full, and had not, therefore, brought with him into Court the additional documents, copies of laws, authoritative decisions of the Supreme Court of the United States, etc., which he relied upon and were intended for filing and presentation to the Court along with his aforesaid petition. But he would, nevertheless, if the Court so directed, proceed to read his said petition.

The Court directed that the petition be read at once.

The relator aforesaid accordingly read his petition to the Court, and at its conclusion the Justices took the same under advisement.

Thereafter, on the 12th day of October, 1883, while the matter was thus under advisement, the said relator filed with the said justices of the said court in general term, his written petition for a further or additional hearing upon the said petition for a rule to the Secretary of the Navy to show cause, as hereinbefore set forth.

No further proceedings were had in the matter until the 15th day of October, 1883, when the said Justices, in General Term, without further or additional hearing from the said relator, rendered their decision dismissing the aforesaid petition and application.

The relator, thereupon, at the same time, made his motion in open Court to set aside the judgment last aforesaid, and for a rehearing of the said petition:—1st, upon the grounds set forth in the aforesaid additional or supplemental petition herein filed on the 12th of October, 1883; and, 2d, because the aforesaid judgment was not in accordance with the law and the facts.

The Court overruled said motions.

And thereupon, at the same time, the said relator gave notice of appeal to the Supreme Court of the United States: and also gave notice of exceptions to the decision, rulings, and proceedings of the Court herein.

[EXHIBIT "A."]

GENERAL RULES.

Special Remedial Writs.

19. Motions or applications for special remedial writs, such as writs of *quo warranto*, mandamus, certiorari, supersedeas, &c., shall be heard by the Circuit or Criminal Court, or before one of the Justices at Chambers, or in Special Term; but not until a petition, verified by affidavit, and stating the grounds of the application, has been filed and docketed. But the Justice to whom the application is made may order it to be heard in the General Term in the first instance. Motions to quash, set aside, or dissolve any of said writs, may be heard in the same manner.

Endorsed on the foregoing is the following: "24811 Law. U. S. ex rel. Wm. W. Warden *vs.* W. E. Chandler, Sec'y Navy. Bill of Exceptions. Filed Nov. 21, 1883. R. J. Meigs."

BILL OF EXCEPTIONS REFUSED.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

General Term.

THURSDAY, *November* 22, 1883.

UNITED STATES, ex rel. WM. W. WARDEN, *vs.* WM. E. CHANDLER, Secretary of the Navy. } *At Law, No.* 24811.

This cause coming on to be heard on the Bill of Exceptions tendered and filed herein by the Relator on the 21st November, 1883, and being thereon considered, ~~it is ordered that said bill of exceptions be and hereby is refused.~~ the Court declines to sign the same.

Bond for Writ of Error.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

The 22d day of November, 1883.

United States, ex rel.
William W. Warden,
vs.
William E. Chandler,
Secretary of the Navy.

No. 24,811. *Law Docket. In error.*

Know all men by these presents, that we, William W. Warden and Clifford Warden, of Washington City, District of Columbia, are bound unto the above-named William E. Chandler, Secretary of the Navy, in the sum of two hundred dollars, to be paid to the said William E. Chandler, his executors or administrators. To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 22d day of November, 1883.

Whereas the above-named William W. Warden has prosecuted his writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said Supreme Court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named William W. Warden shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

WM. W. WARDEN, [seal.]
CLIFFORD WARDEN. [seal.]

Sealed and delivered in presence of—

R. J. Meigs,
Clerk.

WRIT OF ERROR.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Chief Justice and Justices of the Supreme Court of the District of Columbia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between United States, *ex rel.* William W. Warden, and William E. Chandler, Secretary of the Navy, a manifest error hath happened, to the great damage of the said relator, as by his complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: Therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable Morrison R. Waite, Chief Justice of the United States, this 22d day of November, in the year of our Lord 1883, and of the independence of the United States the one hundred and seventh.

R. J. MEIGS,
Clerk.

CITATION.

DISTRICT OF COLUMBIA, *to wit:*

To William E. Chandler, Secretary of the Navy:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washing-

ton on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the District of Columbia, wherein the United States, on the relation of William W. Warden, is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness, David K. Cartter, Chief Justice of the said Supreme Court of the District of Columbia.

R. J. MEIGS,
Clerk.

AUTHENTICATION OF RECORD.

Clerk's Certificate.

Clerk's Office, Supreme Court of the District of Columbia.

I, R. J. Meigs, clerk of the said court do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 26th day of November, 1883.

R. J. MEIGS,
Clerk.
by R. J. MEIGS,
Assistant Clerk.

Justice's Certificate.

I, David K. Cartter, Chief Justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 26th day of November, 1883.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 26th day of November, 1883.

R. J. MEIGS,
Clerk.
by R. J. MEIGS,
Assistant Clerk.

ASSIGNMENT OF ERRORS.

SUPREME COURT OF THE UNITED STATES.
October Term, 1883.

UNITED STATES, ex rel.
WILLIAM W. WARDEN,
vs.
WILLIAM E. CHANDLER,
Secretary of the Navy.

Afterwards, to wit, on the 26th day of November, 1883, in the term last aforesaid, before the Justices of the Supreme Court, at the Capitol in the city of Washington, comes the said William W. Warden, relator, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given against the aforesaid relator; whereas, by the law of the land the said judgment

ought to have been given for the said relator and against the said defendant. And the said relator prays that the judgment aforesaid for the error aforesaid, and other errors in the record and proceedings aforesaid, as the same appears more fully therein, may be reversed, annulled, and altogether held for nothing, and that he, the said relator, may be restored to those things which he has lost by reason of the said judgment.

WILLIAM W. WARDEN,
Relator.

Supreme Court of the United States.

No. 218.

THE UNITED STATES EX REL. WILLIAM W. WARDEN

vs.

WILLIAM E. CHANDLER, SECRETARY OF THE NAVY.

To the Honorable Justices of the Supreme Court of the United States:

1. This case is submitted to the Court upon the record printed herein, which embraces all there is of its history, either of law or fact, save the suggestion that the nominal defendant, Hon. William E. Chandler, is no longer Secretary of the Navy.

2. The case was brought to this Court, as the record shows, upon exceptions to the rulings and judgment of the lower court, by which the plaintiff was prevented from making formal legal service of the writ of mandamus upon William E. Chandler, then Secretary of the Navy, and by which said rulings, and judgment also, the plaintiff was deprived of a full hearing of his complaint against the Secretary of the Navy aforesaid.

3. The plaintiff maintains that his original petition, filed in the lower court, presents grounds sufficient to warrant

that court in issuing the writ of mandamus, as prayed for in said petition.

4. The contention herein is also directed to matters which the plaintiff alleges are errors of the said lower court, in its sudden and surprising changes of practice upon an application for the writ of mandamus, the said court's anomalous reasons given therefor and announced at the inception of the proceedings herein, and the rulings and judgment of said lower court upon plaintiff's application and petition for the writ of mandamus.

5. Those errors of the lower court are apparent upon the face of the record generally, but especially in the printed transcript herein filed, beginning at page 20 and following thereafter on pages 21, 22, 23, 24, 25, and 26.

WM. W. WARDEN,
Plaintiff.

240
No record

122-944

(1)

Supreme Court, United States.

EAGLE LOCK CO., PLAINTIFF'S IN ERROR,

vs.

LUCIUS ANDRESS, DEFENDANT IN ERROR.

STATEMENT AND BRIEF

ON BEHALF OF PLAINTIFF IN ERROR.

MARVIN, LAIRD & NORTON, Pl'ts Attorneys.

Edwards W. Laird, Att'y.

SUPREME COURT OF THE UNITED STATES.

EAGLE LOCK CO. *Pl'ff in Error,*
vs
LUCIUS ANDRESS, Def't in Error.

STATEMENT.

Lucius Andress, on the 8th of Oct., 1883, filed his petition in the Court of Common Pleas of Ashtabula County, Ohio, against Eagle Lock Co., and The Western Lock Company, Claiming a judgment against Eagle Lock Co. upon a certain Contract which he claimed Eagle Lock Co. had made with The Western Lock Company, whereby it should pay the amount of a certain note which The Western Lock Company had given to said Andress.

At the time he filed his petition the claim did not amount to $500.00.

At the time Eagle Lock Co., entered an appearance in the State Court it did exceed $500.00 exclusive of cost, and upon its first appearance it filed its petition with Bond for removal to the Circuit Court of the United States, Northern District of Ohio and Eastern Division, and the case was removed.

Andress' Attorney thereupon filed his motion to remand said cause—for the reason that the amount involved at the time his action was brought in the State Court did not exceed the sum of $500.00; he also claimed that judgment was sought against a resident, namely The Western Lock Company, as well as the now resident Eagle Lock Co.

In opposition to the motion Eagle Lock Co. by its attorneys, urged—That the amount at the time of entering appearance for Eagle Lock Co. and the filing of its petition for a re-

moval, exceeded the sum of $500.00 and that this date should fix the amount of the claim. 2nd, That the controversy between said Andress and Eagle Lock Co. can be decided without involving any right which he may have against The Western Lock Company, for the reason that his claim against The Western Lock Company, is founded upon a promissory note, and that against Eagle Lock Co. is founded upon a contract separate and distinct from the note.

His honor, Judge Baxter, sustained said motion upon the sole ground that—The amount of the claim at the time action was brought by Andress in the State Court did not exceed $500.00, and remanded the cause. To this ruling Defendant Eagle Lock Co. excepted, and now prosecutes its writ of error in this Court, notwithstanding the amount of the claim, under the decision in Babbitt vs. Clark, 103 U. S. R 606, and prays a reversal of said order, claiming the true rule to be the amount of the claim at the time of the removal.

BRIEF.

The Right of Removal is fixed by the amount of the claim at the time the removal is applied for.

The Western Lock Company is a nominal Defendant only, the liability of the Eagle Lock Co. must of necessity be determined separate and apart from The Western Lock Company.

As to the first proposition in the Brief we cite:—

Desty's Removal of causes, pages 87 and 110.

Dillon Removal of causes, page 63.

Fields Federal Courts, page 112.

McGinnity vs. White, 3rd Dill 350, 19th Wall, 178, 189.

Bank U. S. vs. Daniel, 12th Peters, 32.

Upon the second proposition of Brief we cite:—

U. S. R. S. § 639—Field Federal Courts page 116.

103 U. S. Reports, Barney vs Layton, page 205.

We also urge that the time of the appearance of Defendant in Court is the true time at which the amount should be fixed.

The issuing of a summons does not bring Defendant into Court: its service will.

Now a claim might be filed in Court and held there indefinitely and Defendant have no notice of it, yet when he is brought into Court he has a right to know what there is claimed against him. Does the claim *then*, exclusive of costs, exceed $500.00; if so, why should his rights be lessened by the fact that the action was filed before it amounted to $500 00. In Ohio, under certain contingencies, a claim may be sued before it has fallen due. Would any one say that the commencing of such an action should govern as to removal rather than the appearance of Defendant.

Defendant has no right in Court, and is not in Court until service, and the service warns him when to appear.

His right to removal should be fixed at the time of his right of appearance, otherwise he is deprived of a right granted by the statute.

In the case at bar the claim lacked a few cents of $500.00 at the time it was sued, at the time of Defendant's appearance it exceeded $500.00.

Following the well established rule as we supposed, we filed a petition for removal. Who is right?

Respectfully submitted,

MARVIN, LAIRD & NORTON,

Attorneys for Plaintiff in error.

EDWARDS W. LAIRD, Attorney.